EX PARTE OR LATE FILED

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Petition of Ameritech Corporation	)	
to Remove Barriers to	)	CC Docket No. 98-32
Infrastructure Investment in	)	
Advanced Telecommunications Capability	)	

MOTION OF AMERITECH TO ACCEPT LATE-FILED REPLY COMMENTS

Pursuant to section 1.46 of the Commission's rules, 47 C.F.R. § 1.46, Ameritech Corporation ("Ameritech") respectfully requests that the Commission accept one day late Ameritech's reply comments, filed concurrently with this motion, in the above-captioned docket. Due to problems in transmitting Ameritech's reply comments from Chicago to its Washington, D.C. office Ameritech was unable to file its reply comments on time.

Ameritech certifies that it has not received, nor has it reviewed, any of the other reply comments filed in this proceeding. Accordingly, no other party to this proceeding will be prejudiced in any way by granting Ameritech this brief extension of time in which to file its reply comments.

Ameritech orally notified Commission Staff responsible for the above-captioned proceeding that its reply comments would be filed on Thursday morning, May 7, 1998.

For the foregoing reasons, Ameritech respectfully requests that the Commission grant this Motion to Accept Late-Filed Reply Comments.

Respectfully submitted,

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Dated: May 7, 1998

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REPLY COMMENTS
OF
AMERITECH

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REPLY COMMENTS

OF

AMERITECH

I. INTRODUCTION

Chairman Kennard recently noted that advanced infrastructure will be rapidly deployed if the Commission unleashes the forces of the market place and eliminates regulatory barriers that chill investment incentives:

"I want to rely on competition to have advanced infrastructure deployed. ... And I want to make sure that current regulation does not prevent the deployment of facilities that otherwise would be built. I want incumbent telephone companies to play a major role in the deployment of these services."[1]

Ameritech agrees wholeheartedly with these sentiments, as do many other participants in this proceeding. Not surprising however, interexchange carriers ("IXCs") and Competitive Local Exchange Carriers ("CLECs") do not. Rather, they seek to insulate themselves from the competition Ameritech would bring to the marketplace for advanced telecommunications capabilities if the Commission reduces regulatory barriers to investment, as Ameritech requests. These parties' comments do not come close to rebutting Ameritech's showing that such relief is

[1] Remarks of William Kennard, Chairman, Federal Communications Commission, USTA's Inside Washington Telecom Conference, April 27, 1998 (hereinafter "Kennard speech").

both justified and appropriate under Section 706 of the Telecommunications Act of 1996.[2] To the contrary, the record corroborates Ameritech's contention that investment incentives are needed to encourage timely and widespread deployment of advanced telecommunications capability, and that the Commission's use of the deregulatory measures requested by Ameritech will provide such incentives in a manner consistent with the public interest.

While state and federal implementation issues remain, various parties' warnings of potential anticompetitive conduct are purely theoretical. Even if these concerns had any basis - which they do not - they will be effectively addressed by the separate subsidiary proposed in the Petition.[3] Despite the self-serving attempts of the IXCs and CLECs to insulate their market positions from competition, there is an urgent need for the Commission to act now and grant the relief requested. The Commission should, therefore, act quickly to remove the regulatory barriers that eliminate incentives to investment in advanced telecommunications infrastructure.

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[2] Telecommunications Act of 1996, P.L. 104-104, Title VII, Section 706 (hereinafter "Section 706").

[3] Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability, CC Docket No. 93-82, filed March 5, 1998 (hereinafter "Petition"). Reference is also made in these Reply Comments to the Petition of Bell Atlantic For Relief from Barriers to Deployment of Advanced Telecommunications Service, CC Docket No. 98-11, filed January 26, 1998 (hereinafter "Bell Atlantic Petition"), and Petition of US WEST for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, filed February 25, 1998 (hereinafter "US WEST Petition"), and to the comments filed therein.

II. THE REQUESTED RELIEF IS BOTH PERMITTED AND APPROPRIATE UNDER THE 1996 ACT.

A. Section 706 Permits Forbearance As Requested in Ameritech's Petition.

Although a number of parties argue that the measures proposed in the Petition would be unlawful, these parties do not dispute that under the Commission's existing rules a BOC affiliate meeting the separation requirements of Section 272 is not an incumbent LEC except to the extent the BOC has transferred ownership of so-called bottleneck network facilities to that affiliate. These parties assert, instead, that the Commission lacks authority to either (1) forbear from applying Section 271 interLATA entry requirements and Section 272 separation requirements to advanced telecommunications services or (2) approve the establishment of a single LATA for data services. These arguments are without merit.[4]

Arguments that the Commission lacks authority to forbear from applying Sections 271 and 272 to advanced data services all boil down to the proposition that Section 706 merely directs the Commission to use the authority conferred elsewhere in the Act to promote the development of advanced telecommunications services, without giving the Commission the additional powers necessary to pursue this goal. Several parties[5] argue, in particular, that Section 10(a) is the sole source of the Commission's forbearance authority and that any exercise of forbearance by the Commission is thus constrained by Section 10(d).[6] This argument is specious in a number of

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[4] The Commission should disregard the curious argument of ICG, which somehow concludes that Ameritech needs a "waiver of the statutory requirements" and purports to analyze the Petition against the legal requirements for a waiver of the Commission's rules. Comments of ICG, at 11-12. As set forth in the Petition, Ameritech seeks statutory forbearance as expressly authorized by Section 706, rather than a "waiver" of any rule.

[5] See, e.g., Comments of ACSI, at 6; Comments of AT&T, at 3; Comments of Cablevision, at 6-7; Comments of CIX, at 22-3; Comments of GTE, at 8; Comments of LCI, at 19.

[6] Section 10(d) provides: "Except as provided in Section 251(f), the Commission may not forbear from applying the requirements of Section 251(c) or 271 under subsection (a) of this Section until it determines that those

respects.

Section 706 is, by its plain language, an independent grant of authority, and parties who argue to the contrary ask the Commission to imply limits that are not found in the words of the statute. It does not, for example, direct the Commission to use its Section 10 forbearance authority, or the powers conferred elsewhere in the Act, to encourage the deployment of advanced telecommunications capability.

Not only are these limits absent from the statute itself, they would be directly contrary to congressional intent. The Senate Report on Section 304 of S. 652 -- which was adopted as Section 706 of the Act -- states that "this provision is a necessary failsafe to ensure that the bill achieves its intended infrastructure objective."[7] Obviously, Section 706 could not be a failsafe if it conferred no independent authority to act.

The Senate Report further characterizes the goal of advanced infrastructure deployment as "one of the primary objectives of the bill" and states that Section 706 is intended "to ensure" that this objective is achieved.[8] Insofar as advanced infrastructure is a "primary objective" of the bill, it would be odd, indeed, if Congress did not give the Commission any independent authority to pursue this objective. Without such authority, the Commission could not ensure that this objective is achieved.

In short, neither the language nor the legislative history of Section 706 supports the narrow reading of that provision that some parties advance. The only possible conclusion is that Section 706 is an independent grant of authority. To be sure, the Commission must exercise this

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requirements have been fully implemented." (Emphasis added.)

[7] S. Rep. No. 23, 104th Cong., 1st Sess., at 51 (1995) (emphasis added).

[8] Id. at 50 (emphasis added).

authority in a manner consistent with the public interest. This means, among other things, that the Commission must balance other goals reflected in the Communications Act -- including the goals of Sections 251 and 271 -- in implementing Section 706 authority. In this respect, Section 706 is not a *carte blanche* permitting the Commission to rewrite the Communications Act, as some suggest Ameritech's reading would imply. On the contrary, the public interest test expressly incorporated into Section 706 ensures that any exercise of Section 706 authority, including any exercise of forbearance authority conferred by that provision, reflect not only the goals of Section 706, but also other important goals, including those of the Communications Act.

Some parties note that Section 706 is not actually part of the Communications Act and claim that this somehow demonstrates that Congress did not intend for Section 706 to confer independent implementing authority. The fact that Section 706 is not part of the Communications Act, however, proves just the opposite: if Congress had intended Section 706 to simply incorporate the powers given to the Commission in the Communications Act, it would have incorporated that provision into the Act itself. The fact that it did not – and that it instead chose to enact Section 706 as a stand-alone provision – only underscores that this provision necessarily confers independent authority.

Because Section 706 is an independent grant of authority, arguments that Section 10(d) of the Act is a bar to the relief requested by Ameritech are misplaced.[9] The Section 10(d) limit upon which these parties rely applies, by its own terms, only to forbearance pursuant to Section 10(a). This limitation, therefore, does not apply to any other exercise of forbearance, including

[9] Also misplaced are arguments that Section 10(d) precludes the Commission from forbearing from applying the full panoply of Section 272 requirements to advanced data services. Even assuming arguendo that Section 10(d) precludes the Commission from forbearing from applying Section 272 in its consideration of a Section 271 petition, Section 10(d) does not impose limits on the Commission's Section 706 authority. Thus, the BOC Forbearance Order is inapposite.

forbearance pursuant to the Commission's Section 706 authority.

TRA attempts to escape the plain language of subsection (d) by asserting that a broader limit would have been superfluous since Section 10(a) is the only source of regulatory forbearance granted to the Commission.[10] This assertion is incorrect. Aside from the fact that Section 706(a) confers express forbearance authority to promote the goals of that provision, so, too, does Section 332 of the Act. Parties do not, and could not, claim that Section 10(d) limits the Commission's Section 332 forbearance authority: since Congress gave the Commission the right to decide whether to subject commercial mobile radio service providers to Section 251 in the first instance, Congress could not possibly have intended to deny the Commission authority to forbear from applying that provision to CMRS providers. For these reasons, the limits in Section 10(d) could not possibly apply to all exercises of forbearance by the Commission. These limits apply by their terms only to forbearance pursuant to Section 10(a) and they must be so construed.

Indeed, because Section 706 is not part of the Communications Act, the only way it could be limited by Section 10(d) would be if Section 706 or Section 10 specifically so required. Neither, however, does. To the contrary, Section 10(d) refers, by its express terms, to forbearance pursuant to Section 10(a), and Section 706 contains no reference at all to Section 10 of the Communications Act. That being the case, the Commission could not find that Section 10(d) limits Section 706 forbearance; to do so would be to ignore that these two provisions are housed in separate statutes.

For this same reason, arguments that the "specific" provisions of a statute control over more general provisions are completely misplaced. That principle does not apply when, as is the case here, the specific provision is not part of the same statute as the more general one.

B. The Requested LATA Boundary Modification is Permitted by the 1996 Act.

Nor do parties present a convincing argument that the Commission is statutorily barred from establishing a single global LATA for packet-switched data services. Those contesting such authority claim that: (1) Section 3(25) somehow permits the Commission only to make moderate, incremental changes in LATA boundaries, not to eliminate them altogether;[11] (2) modifying LATA boundaries as Ameritech proposes would be inconsistent with the Commission's determination in the U.S. West LATA Boundary Decision[12] that Section 10(d) prohibits the Commission from using its authority under Section 3(25) to circumvent the requirements of Section 271;[13] and (3) granting the LATA modification requested by Ameritech would somehow undermine Section 271 and the limitation on the Commission's forbearance authority in Section 10(d).[14]

Those who argue that Section 3(25) permits the Commission only to make moderate, incremental changes in LATA boundaries do so based on the Supreme Court's determination in MCI. v. AT&T that the Commission's authority under Section 203 to "modify" tariff filing

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[10] Comments of TRA, at 6.

[11] Comments of AT&T, at 11 (citing MCI Telecom. Corp. v. AT&T, 512 U.S. 218 (1994)); Comments of MCI, at 32-33; Comments of Commercial Internet Exchange Ass'n, at 24-25; Comments of Information Technology Ass'n of America, at 6-7; Comments of Transwire, at 16-17; Comments of Teleport, at 6-7; Comments of Cablevision, at 9.

[12] Petition for Declaratory Ruling Regarding U.S. West Petitions to Consolidate LATAs in Minnesota and Arizona, Order, NSD-L-97-6, Order, NSD-L-97-6, 12 FCC Rcd 4738, 4751-52 (1997) (U.S. West LATA Boundary Decision).

[13] Comments of AT&T, at 12; Comments of MCI, at 32; Comments of TRA, at 8; Comments of ACSI, at 16; Comments of CompTel, at 15; Comments of ALTS, at 5.

[14] Comments of MCI, at 33; Comments of Sprint, at 7; Comments of Cablevision Lightpath, at 9.

requirements empowered the Commission to adopt only moderate changes in such requirements.[15] This argument completely ignores a fundamental difference between the language in Section 3(25) and that of Section 203.

Section 203 provides that the "Commission may . . . modify any requirement made by or under the authority of this Section . . . except that the Commission may not require the notice period specified in paragraph (1) to be more than one hundred and twenty days."[16] In interpreting Section 203(b) to permit the Commission to make only moderate changes in tariff filing requirements, the Court focused not only on the word "modify" itself, but made much of the fact that the only exception to the Commission's 203(b) authority is that the Commission may not extend the notice period for tariff filings beyond 120 days. As the Court stated, "[i]s it conceivable that the statute is indifferent to the Commission's power to eliminate the tariff filing entirely . . . and strains out the gnat of extending the waiting period for tariff revisions beyond 120 days? We think not. . . . in the small-scale world of 'modifications,' it is a big deal."[17] Section 3(25), by contrast, provides that the term "LATA" means "a contiguous geographic area [established before the date of enactment of the Telecommunications Act of 1996]; or (B) established or modified by a Bell operating company after such date of enactment and approved by the Commission."[18] Section 3(25), therefore, has no exception or other language comparable to that in Section 203 that suggests the Commission's authority to approve LATA modifications is similarly limited. For this reason alone, the Supreme Court decision cited is wholly inapposite.

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[15] MCI Telecommunications Corp. v. American Tel. & Tel. Co., 512 U.S. 218, 225 (1994) (hereinafter "MCI v. AT&T").

[16] 47 U.S.C. § 203(b)(2).

[17] MCI v. AT&T, 512 U.S. at 225.

Even if the use of the term "modif[y]" in Section 3(25) were to intimate (which it does not) that the Commission may approve only moderate changes in existing LATA boundaries, it does not in any way suggest that the Commission's authority to approve new LATAs established by the BOCs (such as new LATAs for a particular service) is similarly limited, if the Commission finds that the "establishment" of new LATAs is consistent with the public interest. Moreover, even if the Supreme Court's decision in MCI v. AT&T were applicable to Section 3(25), Ameritech's proposed LATA redefinition would not result in the complete elimination of LATA boundaries as some have suggested. Rather, it would modify LATA boundaries only as they apply to packet-switched data services, leaving intact such boundaries for existing circuit-switched voice services and facilities, which are the main focus of the market-opening provisions in Sections 251 and 271, and therefore of the interLATA prohibition.[19] Consequently, Ameritech's proposed LATA modification for packet-switched data services and facilities would result in only a relatively moderate change in LATA boundaries, consistent with the Supreme Court's decision in MCI v. AT&T.

Ameritech's proposal is not inconsistent with the Commission's decision last year that states may not redefine LATA boundaries to coincide with state boundaries.[20] That decision was based on the Commission's determination that it has exclusive authority under Section 3(25) to redefine LATA boundaries, and that it has not delegated such authority to the states. In addition,

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[18] 47 U.S.C. § 153(25) (emphasis added).

[19] Nothing in the language or legislative history of Section 3(25) suggests, as some have argued (Cablevision Lightpath Comments at 10), that any LATA boundary modification must be for all purposes and all services. Moreover, as Bell Atlantic aptly observes, modification of current LATA boundaries for packet-switched services is consistent with the MFJ court's pre-1996 Act jurisprudence, which approved modifications of LATA boundaries for specific purposes, such as where the modification enabled the provision of new services over wider geographic areas. See Bell Atlantic Petition at 11.

[20] U.S. West LATA Boundary Decision, 12 FCC Rcd at 4751-52.

as Ameritech observed in its Petition,[21] the Commission made clear that it was considering the issue of its authority to modify LATA boundaries solely with respect to traditional, circuit-switched services. Consequently, the Commission's U.S. West LATA Boundary Decision in no way precludes the Commission from modifying LATA boundaries for packet-switched data services as Ameritech requests.

Ameritech's proposed LATA modification does not undermine the objectives or the effectiveness of Sections 271 and 10(d) because it would not affect in any way Ameritech's obligation under Sections 251 and 271 to open its existing local exchange network to competition. Moreover, regardless of what action the Commission takes on its Petition, Ameritech is committed to meeting the requirements of Section 271 at the earliest possible date so that it can satisfy its customers' demands for integrated service packages that include circuit-switched, voice-grade, long distance services.

Ameritech recognizes that the creation of a single "data LATA" would be a bold step, but no party has shown that there is any statutory bar to such action. It represents "out-of-the box" thinking, to be sure, but that is not something to be avoided; rather, it is the hallmark of good public policy. More importantly, it is the Commission's legacy. A LATA modification is precisely the kind of creative measure that Section 706, not only permits, but commands. The Commission has the power to fulfill its Section 706 mandate. It should now exercise that power.

C. The Requested Relief Does Not Circumvent the Goals of the 1996 Act.

A number of parties claim that Ameritech's Petition is somehow an attempt to subvert the goals or structure of the 1996 Act. For example, ACSI alleges that all three BOC Petitions before

[21] Petition, at 13.

the Commission are "thinly veiled attempts to circumvent the central competitive provisions of the 1996 Act";[22] AT&T warns that granting Ameritech's Petition would "eviscerate [the] statutory scheme";[23] Sprint styles the BOC Petitions as an "end run" around Section 271.[24]

Contrary to these stern warnings, the requested relief in no way compromises any of the goals and policies of the 1996 Act. Even after receiving relief as authorized by Section 706, Ameritech will still be required to demonstrate that it has fully opened the local exchange to competition before it is permitted to provide interLATA circuit-switched voice services pursuant to Section 271 of the Act. In fact, Ameritech is committed to meeting the requirements of Section 271 at the earliest possible date so that it can provide voice and data service on an intraLATA basis and also meet the marketplace's demand for integrated service offerings that include circuit-switched, interLATA voice services. To this end, Ameritech will continue its efforts to implement all the "competitive checklist" requirements as quickly and effectively as possible. Both the Commission and the Department of Justice have observed that Ameritech "has made significant and important progress toward meeting the preconditions for in-region interLATA entry,"[25] and Ameritech remains fully committed to the major implementation efforts and expenditures that will achieve that objective in the shortest possible time.

Some parties claim that, insofar as packet-switched networks can be used for both voice and data traffic, the Commission cannot, as a practical matter, limit any relief simply to data traffic. They claim that Section 706 would therefore "blow a hole" in the very fabric of the Act.

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[22] Comments of ACSI, at 2.

[23] Comments of AT&T, at 7-9.

[24] Comments of Sprint, at 6.

[25] In the Matter of Application of Ameritech Michigan Pursuant to Section 271 To Provide In-Region, InterLATA

These arguments are specious. First, Section 706 makes no distinction between voice and data traffic; it requires the FCC to promote advanced telecommunications infrastructure. Indeed, it is evident that Congress specifically contemplated that such advanced infrastructure would be used for both voice and data traffic since it defined advanced telecommunications capability to include advanced broadband capability "that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications."[26] Second, claims that the Commission cannot grant Section 706 relief because of the possibility that such relief may extend to voice traffic would effectively delete Section 706 from the Act. For example, the Commission would be precluded from promoting deployment of packet-switched networks because of the possible use of those networks to carry some voice traffic. Obviously, Congress' desire that the Commission encourage deployment of advanced infrastructure was not limited only to infrastructure that could be used for data traffic, to the complete exclusion of voice traffic. In any event, these parties grossly overstate the extent to which voice traffic is carried over packet-switched networks. While internet telephony will likely become more commonplace in the future, the vast majority of voice traffic will continue to be handled over the circuit-switched network in the near term. Thus, claims that any relief would effectively apply to all of the BOC's services are disingenuous, at best.

III. INVESTMENT INCENTIVES ARE NEEDED FOR TIMELY DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITY.

A. Regulatory Barriers Continue to Prevent the Necessary BOC Investment.

Services in Michigan, CC Docket No. 97-137, Memorandum Opinion and Order, 12 FCC Rcd 20543, at ¶ 3.

[26] Section 706(c)(1) (emphasis added).

No party has contested the fact that packet-switched data traffic is causing increasing congestion on the existing public switched telephone network ("PSTN").[27] As explained in the Petition, a primary cause of this congestion is a mismatch between the circuit-switched architecture of the existing PSTN -- which was designed primarily to handle a high volume of short holding-time voice calls – and the characteristics of the load offered by today's steadily-increasing proportion of packet-switched data traffic. No party has argued that this problem will not continue to grow. To the contrary, the data show that the exponential growth of the Internet continues unabated, and will do so for the foreseeable future.[28]

Unfortunately, the current regulatory regime discourages LECs from deploying the packet-switched network infrastructure which would efficiently support the increasing proportion of data traffic. In light of the magnitude of the risks and the investment required, there is simply an insufficient opportunity to earn a reasonable return. Unsupported assertions to the contrary[29] ignore the key point in this debate: LECs must invest in their businesses in a manner which maximizes shareowner value. As long as alternative investments continue to be more financially attractive than the infrastructure investment required to meet customers' needs for advanced telecommunications capability, investment planning must reflect that reality.[30] Thus, instead of

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[27] Petition, at 6-8; see also Comments of FOCAL, at 14; Comments of GTE, at 4-5; Comments of WorldCom, at 34, 41; Comments of Sprint, at 14; Comments of ITAA, at 12; Comments of COVAD, at 5.

[28] Comments of CIX, at 4; Comments of United Homeowners, at 8; Comments of CompTel, at 4-5; Comments of WorldCom, at 47; Comments of AT&T, at 23-4; Comments of MCI at 36.

[29] See, e.g, Comments of APK net, Cyber Warrior, et al., at 16 (because xDSL equipment is "basically CPE", the LECs need no incentive to install it); Comments of AT&T, at 13 (Ameritech "clearly has the means to upgrade its local network ... if it desires to do so."); Comments of LCI, at 9 (there is "no reason to believe" that broadband-related investment would happen any faster if relief were granted); Comments of Transwire (on Bell Atlantic Petition), at 10.

[30] The Comments reflect this reality. See, e.g., Comments of ALTS, at 12 (criticizing Ameritech for electing to invest in international projects); Comments of AT&T, at 13.

investing in advanced infrastructure, LECs will have no choice but to apply patchwork solutions to network congestion problems.

The Comments present neither data nor serious argument contesting the fact that deployment of advanced telecommunications capability on the widespread scale envisioned by Congress is very expensive. AT&T's unsupported claim that "Ameritech can easily upgrade its existing network on a customer-by-customer basis to provide broadband services ... and can do so at low incremental costs"[31] is ludicrous. As discussed in the attached Affidavit of Timothy Waters, Ameritech Vice President - Product Management,[32] the amount of capital required to deploy advanced telecommunications capability on a wide scale across the region served by the Ameritech operating companies is in the range of $4 billion. Other cost estimates on the record confirm the enormous magnitude of the required investment.[33]

Deployment of advanced telecommunications capabilities, and ADSL in particular, is, therefore, enormously expensive. At the same time, demand for specific advanced telecommunications technologies such as ADSL is uncertain both because they are largely untried in the marketplace and because they may be eclipsed by other technologies, such as cable modems or wireless technologies. The artificial market restrictions embodied in various requirements of the 1996 Act designed to open the existing, circuit-switched network to competition, effectively deter the BOCs from making the huge investments necessary to deploy advanced telecommunications capabilities by denying them a reasonable opportunity to earn an acceptable return on these investments.

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[31] Comments of AT&T, at 12.

[32] See Attachment A to these Reply Comments.

In particular, Section 251(c)(3) would require Ameritech to provide competitors access to any new facilities deemed to be network elements on a Total Element Long Run Incremental Cost (TELRIC) basis. In light of the substantial risk associated with the deployment of ADSL and other advanced, packet-switched technologies, Ameritech simply could not justify the huge investment necessary if it were permitted to recover only forward-looking incremental costs. Similarly, the resale obligation imposed by Section 251(c)(4) would chill investment in advanced telecommunications by denying Ameritech the ability to distinguish its advanced data services from those of its competitors. Again, Ameritech could not rationally justify the investment risk necessary to deploy advanced data facilities if its competitors could simply piggy-back on its investment once Ameritech has won consumer acceptance of its new service offerings.

The most significant disincentive to Ameritech's investment in new broadband facilities is the interLATA prohibition in Section 271, which bars Ameritech from providing Internet backbone and other data services across LATA boundaries, and from meeting the needs of customers who seek end-to-end solutions from their telecommunications carrier. This prohibition denies Ameritech the ability to participate fully in the broadband marketplace, and to design and utilize advanced data facilities efficiently by aggregating traffic across LATA boundaries. If Ameritech is to incur the tremendous costs, and assume the substantial investment risk of deploying advanced data facilities, it must be permitted to utilize fully and efficiently the capacity of any such facilities, and to participate fully in the broadband marketplace.

Everyday marketplace realities reflect the negative impact of these artificial regulatory restrictions upon Ameritech's ability to compete for customers seeking advanced

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[33] See, e.g., US WEST Petition, at 31-5.

telecommunications capability. Because of the interLATA prohibition, for example, Ameritech was recently forced to turn down several requests to bid on advanced telecommunications capabilities sought by healthcare consortia, colleges and universities, and state and local governments. One state government organization sought out Ameritech's bid on a high-speed cell-relay network connecting dozens of offices across the state; another specifically asked Ameritech to provide a single-provider, end-to-end data network. Although these potential customers actively solicited Ameritech's participation, Ameritech was barred by the interLATA prohibition from offering to provide these services.

The interLATA restriction also has a profound effect on Ameritech's ability to serve customers in the banking and financial services industries, which are among the largest users of telecommunications in the country, if not the world. This was recently demonstrated by Ameritech's experience in bidding for the business of several large multistate banking concerns, each one of which ultimately placed its broadband data services orders with IXCs who countered Ameritech's bids with offers of full-service packages of local exchange and interLATA offerings. These instances illustrate – as do countless others – a key, undisputed fact: consumers in the highly-competitive marketplace for advanced telecommunications capability demand the single-provider solutions which the BOCs are precluded from offering.

Despite various parties' allegations of widespread anticompetitive conduct,[34] it is uncontroverted that Ameritech and the other BOCs have little presence in the high-speed data networking marketplace. Based on estimated 1996 revenues for packet-switched data services,[35]

[34] Such claims are discussed below.

[35] This category included X.25, frame relay, SMDS and ATM services.

the BOCs accounted for approximately 11% of the total; Ameritech accounted for less than 2%.[36] Complaints of alleged monopolistic practices and other "bad acts" by the BOCs must be viewed in light of this marketplace reality.

The recent collapse of AT&T's frame relay network makes all too vivid the need for meaningful competition in today's advanced telecommunications marketplace. Attributed by AT&T to "a unique sequence of events" involving an "inadequate" switch software upgrade procedure,[37] the massive network outage that began on April 13 took down the business communications of tens of thousands of customers. This was a particularly dramatic demonstration of the dangers of concentrating a significant proportion of the nation's data traffic[38] on a single network, and clearly showed the need for meaningful competition and real diversity of customer choice. As pointed out by Bell Atlantic,[39] absent regulatory relief for the BOCs, market concentration will only continue to worsen as a result of mergers and acquisitions among the IXCs.

The parties opposing the Petition have offered absolutely no data[40] refuting Ameritech's

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[36] U.S. Public Data Services Market, Publication 2676-63, Frost and Sullivan, 1997 (ISBN 0-7889-0723-9).

[37] AT&T News Release, April 22, 1998.

[38] AT&T's market share for frame relay service has been estimated at 40%. Broadband Networking News, April 28, 1998 (citing a report by the Vertical Systems Group). This fact demonstrates the hollowness of warnings of a BOC data monopoly; see, e.g., Comments of CompTel, at 16 (claiming without support that Ameritech "can and does hold substantial advantages in data services"); Comments of ALTS, at 7 (warning against "monopoly provisioning" of advanced data services).

[39] See Attachment 2 to Bell Atlantic Petition, at 35-6 (explaining why industry observers have remarked that WorldCom has become "King of the Internet," and has "more bandwidth than God.")

[40] See, e.g., Comments of ALTS, at 8 (innovation would "suffer a hammer blow" if relief were granted); Comments of CIX, at 12-14 (the study introduced by Ameritech assumes that regulatory restrictions "have only one effect on innovation: to discourage or delay the introduction of new RBOC services"); Comments of CPI, at 8; Comments of COVAD, at 6.

empirical showing that innovation has in fact been chilled by existing regulatory restrictions. As explained by James Prieger in Attachment B to these Reply Comments, the Comments merely speculate without support whether other forces might have been the cause of the demonstrated reduction in BOC innovation, or whether some unnamed "benefits" of the regulatory restrictions might outweigh the documented decline and delay in the introduction of new services.[41] Such speculation does not change what the data show: innovation is reduced by regulatory intervention in a free marketplace.

B. Commission Action Is Urgently Needed to Remove Regulatory Barriers.

Many comments support the urgent need for action to remove regulatory barriers to investment in advanced telecommunications infrastructure.[42] Some parties, however, urge the Commission to defer any action until after it completes the Notice of Inquiry required by Section 706(b). The Commission should dismiss these transparent attempts to forestall additional competition in advanced data services. As noted in the Petition,[43] Section 706 mandates action, not merely passive study. As Chairman Kennard recently remarked:

> with the explosion of Internet and data traffic that is occurring, it has become apparent that new types of networks need to be built over the next several years to more efficiently handle data traffic.[44]

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[41] Attachment B, at 1-2.

[42] See, e.g., Comments of APT, at 3; Comments of GTE, at 4; Comments of Next Level Communications on US WEST Petition, at 13; Comments of SBC, at 1; Comments of St. George Area Chamber of Commerce on US WEST Petition, at 1; Comments of USTA, at 3.

[43] Petition, at 34-5.

[44] Kennard Speech.

The Commission should give particular weight to the marketplace experience and insight of the Computer & Communications Industry Association, which

> urges the Commission to treat the pleadings in this proceeding with an urgency dictated by current market conditions. Advanced technologies are waiting in the wings, ready to be implemented as soon as new broadband capacity becomes widely available. The demand already exists. If this demand cannot be satisfied -- if it is constrained by the FCC's inability to adjust regulatory policy with sufficient swiftness to keep pace with technological innovation -- then this country will sustain certain injury to its economic growth, worldwide technological leadership, and competitiveness.[45]

History demonstrates that these observations are not merely theoretical, but rather extremely practical. As the Commission noted during its process of adopting rules for the provision of Personal Communications Services ("PCS"),

> cellular and trunked technologies pioneered by American companies not only have met domestic telecommunications requirements, but also have been exported and implemented abroad. As a result, U.S. domestic telecommunications products lead the world in meeting public demand and using innovative technology. ... American companies enjoy a position of global leadership in radio technology that has resulted in strengthening our competitiveness in international markets.[46]

Ameritech joins with the parties supporting speedy action by the Commission over the self-protectionist urgings of the IXCs who, predictably, counsel delay despite the sense of urgency accorded by Congress to widespread and timely deployment of advanced telecommunications capability "to all Americans."[47]

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[45] Comments of CCIA, at 2.

[46] In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314, ET Docket No. 92-100, NPRM and Tentative Decision, FCC Rcd 5676 (1997), at ¶ 22. The Commission specifically noted that "the years-long process culminating in cellular's birth is one of the prime examples of how the Commission's regulatory processes can be manipulated to delay the initiation of a new service. We are determined to avoid that result in this proceeding." Ibid., at ¶ 7. Delay should be avoided here for the same reasons.

[47] Section 706(a).

IV. WARNINGS OF POTENTIAL BOC ANTICOMPETITIVE CONDUCT ARE THEORETICAL IN NATURE.

Various parties warn sternly of potential anticompetitive BOC conduct if the Commission grants the forbearance sought in Ameritech's Petition. For the most part, examples cited in "support" of these warnings are completely irrelevant to the issues before the Commission. ISPs complain that the BOCs have not yet provided them with "access to clean copper,"[48] and speculate that BOC data affiliates would "engage in the coordinated offering of telephone exchange service with its BOC affiliate."[49] Competitive LECs restate their illegitimate claim to reciprocal compensation for Internet traffic,[50] reargue the Commission's decision not to order subloop unbundling,[51] and complain about inside wire policy.[52] The IXCs cite in lockstep a parade of horribles, complaining of insufficient access to unbundled network elements[53] and access to Operations Support Systems ("OSS") capabilities.[54] All these claims should be completely disregarded because they do not bear in any way on Ameritech's request for forbearance. Even if they did, it is clear that this is not an appropriate forum for such complaints. Parties seeking redress for such alleged wrongs can -- and regularly do -- avail themselves of existing state and federal complaint mechanisms, as well as the mediation and arbitration

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[48] Comments of APK net, Cyber Warrior, et al., at 5, 18.

[49] Comments of CIX, at 31.

[50] Comments of ALTS, at 25; Comments of Focal et al., at 19-20; Comments of ICG, at 5.

[51] Comments of DSL Access Telecommunications Alliance, at 13-14. The Commission has rejected such pleas in its First Report and Order in its recent Interconnection proceeding; see 11 FCC Rcd 15499, at ¶ 391.

[52] Comments of ICG, at 6.

[53] Comments of AT&T, at 10; Comments of MCI, at 13-14.

[54] See, e.g., comments of AT&T, at 10.

mechanisms set forth for that very purpose in Section 252 of the 1996 Act.[55] The comments of these parties are simply a case of throwing plenty of mud against a wall, in hopes that some of it sticks.

As discussed above, most of the commenters' allegations of past discrimination by Ameritech are general – and thus unverifiable – or completely irrelevant to the question of forbearance by the Commission with respect to advanced telecommunications capability. The few allegations of specific misconduct are extremely short on their facts. For example, one party (NorthPoint Communications) alleges that Ameritech "denied physical collocation requests by NorthPoint".[56] This allegation is frivolous and not supported by the facts. NorthPoint's request for physical collocation in five Ameritech central offices was received and processed in complete accordance with the prevailing Illinois tariff for physical collocation, which provides for the allocation of space on a "first-come, first-served" basis. Requests for floor space under this tariff are time-stamped and processed in the same manner regardless of whether they originate from an affiliated or nonaffiliated carrier. The prevailing tariff clearly specifies that this offering is available in minimum blocks of 100 square feet, subject to availability of that amount of space in the particular location at which collocation is requested.[57] Since that was not the case in any of the five central offices in question, NorthPoint was offered a virtual collocation arrangement, as required by the 1996 Act[58] and the Commission's rules.[59] Contrary to NorthPoint's claims, it

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[55] 47 U.S.C. § 252(a)(2), (b).

[56] Affidavit of Steven Gorosh on behalf of NorthPoint Communications, Attachment 1 to Comments of DATA.

[57] Copies of relevant pages of the Illinois tariffs (Ill. C.C. Nos. 20 and 21) are provided as Attachment C hereto.

[58] 47 U.S.C. § 251(c)(6).